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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2023-001263

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Plaintiffs,

Of whom RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, are Respondents.

v.

Adele J. Pope, Appellant.

APPELLANT'S REPLY BRIEF

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REPLY TO RESPONDENTS' STATEMENT OF THE CASE AND FACTS[1]

Appellant respectfully responds to the Brief of sixteen respondents, including two of the three major players in Richland 4900 since its commencement on May 19, 2010, and one Respondent claiming to act on behalf of the Attorney General of South Carolina.[2] Respondents supply their own statement of the case and statement of facts, both of which are misleading and incomplete, essentially summarizing this case as three Orders of this Court (two of which were not entered in or related to this case) criticizing Appellant, along with the period of 2023 in which Respondents have capitalized on this Court's March 28, 2023 Order in seeking and obtaining the harshest sanctions available – despite the fact that Appellant took no action after this Court's strong, clear warning. Because the history of this matter from 2010 forward is necessary to give context to each of the petitions to lift stay and to show that, while the petitions were unsuccessful, none was filed in bad faith or for purposes of delay.

While Respondents shy away from saying so in their brief, a primary contention of theirs in the circuit court is that this Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), was wrong. At the April 14 hearing, Respondents' counsel boldly stated:

> Well, I represent the Estate, personal representative of the Estate, Mr. Russell Bauknight, and the Estate does not see *Wilson v. Dallas* as a victory. What *Wilson v. Dallas* did was, Ms. Pope, who had to be removed and that decision upheld the removal because of her contentious relationship withstood early and prompt resolution of all the claims related to the Estate of James Brown because she didn't like -- I'll admit she came up with an argument that in large part, the Supreme Court accepted, but the net result was this, that's why it's not a victory, she got them a bigger piece of a much smaller estate, instead of the Estate having percentage-wise maybe a smaller piece, but of a much larger corpus. That's not a victory. [R. 1162]

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[1] Appellant adopts and relies on her Brief and the full record herein. including the ten affidavits of counsel and others filed in April 2023 in opposition to sanctions.[1] [R. 2118-2368] Appellant rejects all assertions of fact and law set out in Respondents' Brief not ratified or explained herein.

[2] "AG" or "Attorney General"

Although that statement was made by counsel for all 16 Respondents, counsel specifically states that Bauknight, who is Trustee of the Legacy Trust and who was reappointed as Personal Representative of James Brown's Estate and Trustee of James Brown's 2000 Trust shortly after *Wilson* voided his appointments, *does not support* this Court's holding in *Wilson*.

Respondents nonetheless spend their entire brief characterizing as fictional Appellant's allegations that Bauknight, the AG and SWB have spent a decade using this case to benefit Tommie Rae[3] and others whose windfalls under the AG's 2008 Settlement Agreement were properly returned to James Brown's charity by this Court's *Wilson* decision.

Respondents in this case are comprised entirely of individuals and entities who acted together as Respondents in *Wilson*. Despite this Court's 2013 rejection of their arguments, they now return to this Court without a blush to suggest that Appellant should be punished, or better yet hobbled, for refusing to drop the *Wilson* appeal when Respondents sued her in 2010 and for continuing to defend herself from their baseless allegations.

SWB was sole counsel in this case to the AG and all private plaintiffs, including in their successful efforts to transfer two James Brown FOIA 2011 FOIA cases to Richland County and subordinate one to Richland 4900 discovery[4], from Richland 4900's filing in 2010 until 2017. [R. 96, 607, 617, 909]

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[3] Tommie Rae Brown, who was declared to be James Brown's surviving spouse and was to receive 23.75% of Brown's Estate under the AG's 2008 Settlement, and who continued to claim she was James Brown's spouse until this Court finally found that she never was married to him. This final result, reached in 2020, would have been foreclosed by the AG's 2008 Settlement but for Appellant's maintaining the appeal which would result in *Wilson. See Brown v. Sojourner (In re Estate of Brown)*, 430 S.C. 474, 846 S.E.2d 342 (2020).

[4] SWB and Bauknight participated in the decisions of the Honorable Frank Addy to transfer a 2011 FOIA case seeking the 2010 AG's Special Counsel Agreement with SWB to Richland County and consolidate it with Richland 4900 and to transfer a second 2011 FOIA case seeking Legacy Trust documents and the claimed $4.7 million at-death valuation of James Brown's music empire to Richland County. [R. 483-4]

Russell Bauknight ("Bauknight"), trustee of plaintiff Legacy Trust, has acted on behalf of the Attorney General, as well as the seven other Beneficiary Plaintiffs of plaintiff Legacy Trust since 2010, and continues to act for them today.[5] *See* the current caption of this appeal, which includes "Russell L. Bauknnight, . . . on behalf of Alan Wilson, in his capacity as Attorney General for South Carolina" among the Plaintiffs, as it has since this case was filed in 2010.[6]

I. The filing of Richland 4900 and SWB's representation of the State/AG and private plaintiffs at the expense of James Brown's charity

Respondent Legacy Trust, Tommie Rae Brown ("Tommie Rae"), and its other owner-beneficiaries brought Richland 4900 under the AG's Special Counsel Litigation Agreement with SWB, a private law firm. SWB would be paid a contingent fee of up to 40%, with costs advanced by James Brown's estate. [R. 1810-11, ¶a, 1569-70] The AG's Special Counsel Agreement, provided that all damages and costs of this tort suit, "Richland 4900," would flow to the Legacy Trust, with nearly three quarters of the costs and benefits of Richland 4900 to flow to the AG's charity and Tommie Rae. [R. 1811-13, 1225-6]

From 2010 until 2023 SWB has done what it contracted to do, and what the Richland 4900 complaint seeks: to "prove" that Buchanan and Pope were wrong to challenge Tommie Rae's spousal claims and the AG's 2008 Settlement. From 2010 until 2013 SWB's actions complemented those of Bauknight's dozen Legacy Trust attorneys, who were paid $375 - $500 an hour to oppose Buchanan's and Pope's appeal of the AG's 2008 Settlement which became *Wilson*.

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[5] See "FACTS BEARING ON THE MOTION", filed by SWB in August 2010 which describes the AG's 2008 Settlement Agreement and the "facts" which the State/AG presented to the Honorable Casey Manning, the S.C. Court of Appeals, and the Honorable Doyet Early between 2010 from 2016. [R. 1225-6]. A part of that filing is reproduced herein on page 6.

[6] Attorney General Alan Wilson replaced Attorney General McMaster the in caption in 2011.

SWB, acting for the State/AG, obtained dismissal without prejudice of the first Richland 4900 appeal in which Buchanan and Pope asked to dismiss the Richland 4900 complaint as a violation of their Due Process rights. *See* Appellate Case No. 2011 -186406.

On April 24, 2013 the AG wrote SWB to confirm that SWB was never hired by the State/AG to bring Richland 4900, and that SWB would be required to disgorge the costs advanced by Brown's estate because of *Wilson*.[7] [R. 918; 1844-5; 1857] On March 6, 2017, however, Kenneth B. Wingate, one of Respondents' counsel in this case since its filing, testified in a court-ordered deposition:

> Q: Does anything in there refresh your recollection of your responsibility for the case?
> A: We can play this game all day long, Adele. You keep trying to put the word "responsibility" in my mouth. I was one of the attorneys of record representing the Plaintiffs who sued you.
> …
> A: With the direct and specific authorization of the South Carolina Attorney General, who was our client **and remains our client.** [Emphasis supplied]

In 2023 circuit court filings and in Respondents' brief, SWB released a portion of more than 500 pages of billing records in which SWB inexplicably asserts it has been paid on an hourly basis to conduct "all appellate work stemming from Case 4900." [R. 2484; 2487-2534] Like all other litigation expenses Bauknight has spent from James Brown's charity, the total paid to SWB is unknown – although it is likely among the "tens of millions of dollars" Bauknight told the federal court he has spent on litigation.[R., 670;720; 755-56; 865; 1039; 1822-3;1893;2038;2043;2078]

Developments as fundamental and important as these – whether the law firm who sued two South Carolina citizens *on behalf of the AG*, and continues on the warpath against one, is or was an authorized State actor – are extraordinary and among the reasons it was not bad faith for

[7] This letter was undisclosed until being released by the AG's office under the FOIA in 2020, and SWB continued as counsel of record for the AG despite the content of the letter.

Appellant to seek to lift the stay as startling facts came to light during the 6-year pendency of the two previous appeals.

The affidavits of Buchanan, Pope, their attorneys and others confirm that all of their filings and statements, including those under oath, have been in good faith and with a belief that they were reasonable. [R. 2139-41; 2144; 2163-6; 2367-8] There was no evidence before the circuit court to the contrary.

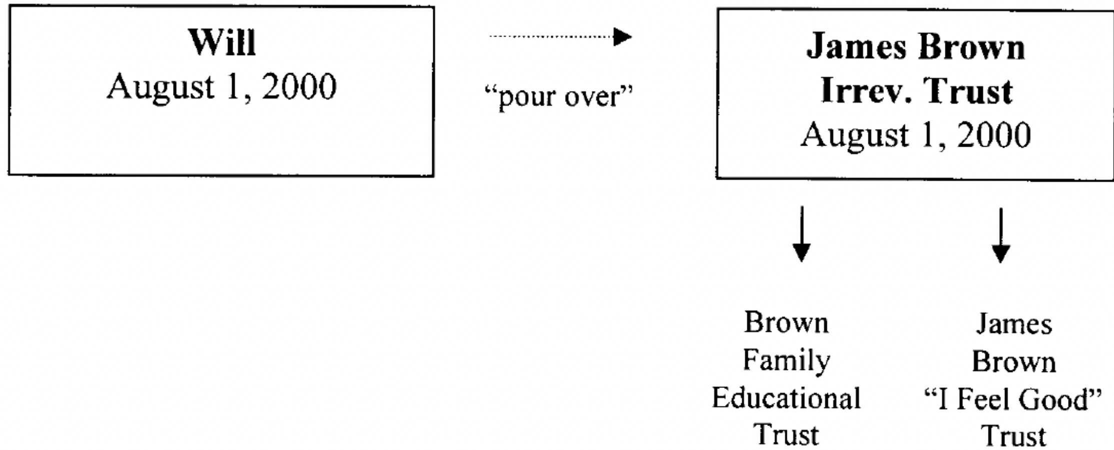
Respondents' revelation that it has been paid funds in addition to the AG's Special Counsel Agreement to advance Tommie Rae's claims and the AG's 2008 Settlement despite the AG's April 24, 2013 letter does not support sanctions against Appellant. It supports reversal of the sanctions orders.

II. Respondents Tommie Rae and the Legacy Trust are the Lead Respondents

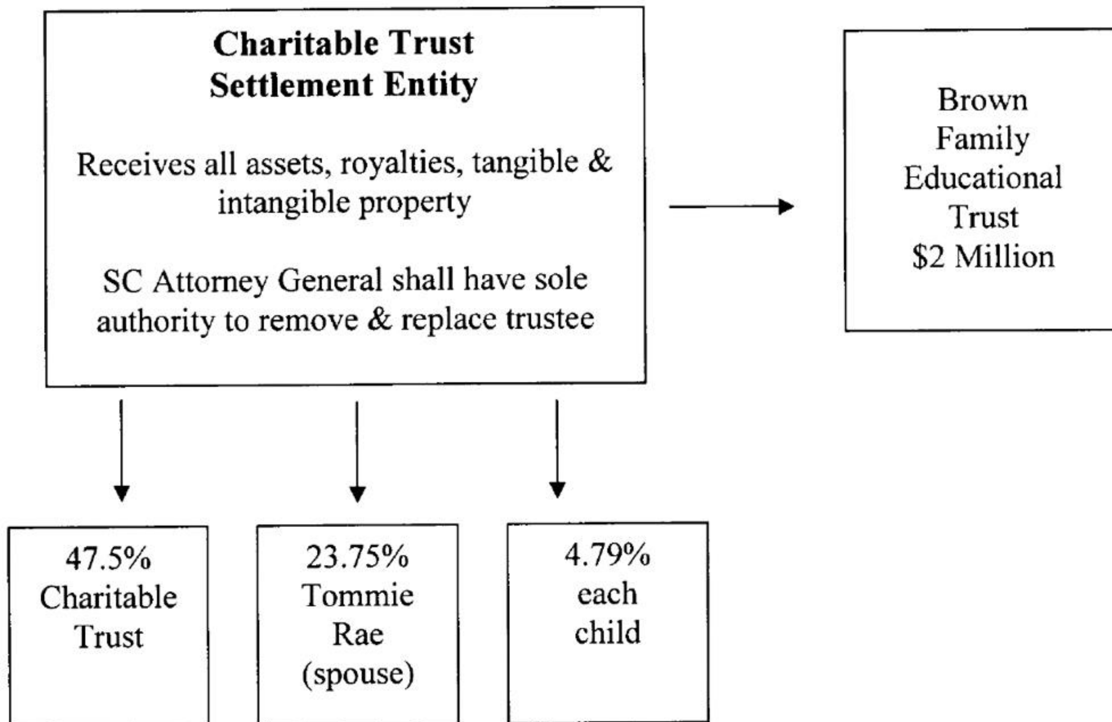
From 2010 until the stay imposed on September 2017 which lasted until 2023, the AG and all Respondents took the position which SWB stated for them in August 2010, namely that the estate plan of James Brown was entirely rewritten to create a "Settlement Entity," the Legacy Trust, "which incorporates all assets, including all royalties, tangible and intangible property of James Brown." [R. 1226]

The Legacy Trust, referred to by SWB as the "Charitable Trust Settlement Entity," is managed by Bauknight. [R. 1226]

In a diagram by SWB, the difference between what was contemplated in James Brown's estate plan and the Legacy Trust owners who control Richland 4900 is described in two charts. [R. 1225-6] James Brown's estate plan is set out as follows:



The Charitable Trust is diagramed as follows:



The assertion in Respondents' brief that Richland 4900 was brought to benefit Brown's estate and charity and that the AG's 2008 Settlement, including the finding that Tommie Rae was Brown's spouse and giving her 23.75% of Brown's "I Feel Good" charity has no support in the current record, fact or law. [R. 125-35; 1225-6] Nor does it have any support in the 30 depositions and sworn testimony and filings of a dozen Richland 4900 plaintiffs which SWB, through bitter resistance to lifting the stay for six years, has been able to suppress for the sole benefit of Tommie Rae and the Legacy Trust.

The testimony and sworn filings of a dozen plaintiffs, the Governor, the AG, the Solicitor General, and seven (7) of SWB's experts, along with the Aiken 1337 depositions of Judge (Retired) Walter Williams, Wallace Lightsey, Esq., James Hardin III, Esq., W. Steven Johnson, Esq., and others which SWB was able to suppress by resistance to lifting the stay, do not support Tommie Rae's position, the Legacy Trust's position, or anything like it. [R. 652-3; 655; 862-3]

The Respondents' brief makes no mention of Tommie Rae's 26-year deception of James Brown himself, Brown's estate, two AGs, and multiple courts, but her deception and false claims are necessary facts leading up to SWB's resistance to lifting the stay, as are the documents SWB, by State/AG action, induced the circuit court to conceal and remove from the public records.

It is not surprising that Solicitor General Cook, who testified in his 2017 deposition that he observed Appellant to be competent and concerned about Brown's charity, also testified that in forty years with the Attorney General he had never seen a case like Richland 4900. [R. 803; 804; 808]

II. Buchanan is paid to go away, and Respondents make all efforts to prevent Appellant from obtaining discovery while the *Wilson* appeal is pending.

In 2012 the State/AG, through SWB, paid Buchanan $500,000.00 to release his counterclaims against Tommie Rae, the State and the Legacy Trust, but forced him into silence,

requiring that he not file a petition for rehearing in *Wilson.* [R. 680;1032;1827;1896;2084;2088] Buchanan, with whom Appellant had acted jointly and unanimously in every fiduciary act on behalf of the Estate of James Brown and The James Brown 2000 Irrevocable Trust, was forced to accept the modest settlement because of family and financial pressures caused by this case. [R., 584-85;679-80;1032] That left Appellant, still trying as she and Buchanan had been for nearly two years, to obtain discovery on Respondents' baseless claims.

Then SWB secured a mediation to prevent Appellant, then the sole Defendant in Richland 4900, any discovery. [R. 521-22;1489-91;515;1464;1465-7;1468-78;1479-88] SWB obtained an "emergency" telephone hearing and order not to depose SWB's witness, Albert Dallas, when it became clear that he would testify that Tommie Rae was not Brown's spouse and Brown's music empire was worth $100 million . [R. 516-18] That year the State/AG, through SWB, rejected offers to let the AG and James Brown's Estate/2000 Trust, the incarcerated Venisha Brown and others out of Richland 4900 at no cost, saying it would "divide" the plaintiffs. [R. 5; 588; 670; 1031; 1166]

III. Respondents clamor to proceed after this Court decides *Wilson* and destroys any chance most Respondents can show that Appellant ever had a duty to them.

This Court issued its final *Wilson* decisions on May 8, 2013. SWB immediately sought what would become a 3-year stay of Richland 4900 and two FOIA cases by letter dated May 10, 2013, due to his clients – who had always posed a conflict – now being unable to hide behind the AG's 2008 Settlement to create some semblance of unity in this lawsuit. [R. 2369]

On May 29, 2013 Levenson and Tommie Rae's attorney announced to the circuit court their plan to disregard *Wilson* and reinstate the AG's 2008 Settlement which the Richland 4900 complaint seeks to enforce. [R. 1976; 2005; 2041; 2178; 2203]

By August 2013 Bauknight, under oath, was defending the AG 2008 Settlement; claiming that Tommie Rae's $4.7 million valuation of Brown's music empire was correct; claiming that Buchanan and Pope were wrong to defend a federal suit and oppose the reinstatement of the thief David Cannon as James Brown's trustee; and claiming that Appellant was dishonest and had "raped" Brown's estate. [R., 2109;2261-62; 2157;2159;1859;1902] Bauknight's music manager, Peter Afterman, was advising Tommie Rae in efforts to secure royalties devised to Brown's charity over objections of plaintiffs Deanna Brown-Thomas, Dr. Yamma Brown, and others. [R.988-90 (Afterman Aff, 8/27/19, p.2, 989); 1593;1600; 1649;1697;1704]

By 2015, in cases where Buchanan, Pope and Dallas were excluded from all participation in 2013, Tommie Rae, concealing public evidence of her bigamy under a 2008 *ex parte* circuit court order, secured a second circuit court approval of her claim to be the spouse of James Brown. *See Brown v. Sojourner (In re Estate of Brown*), 430 S.C. 474, 846 S.E.2d 342 (2020).

By September 2016, with Respondents continuing to thwart discovery at every turn, there had been almost no discovery in Richland 4900, while in Aiken 1337, there were more than 30 depositions, including those of the Governor, AG, the Solicitor General, the Chief Deputy AG, seven experts of the State/AG in Richland 4900. [R., 1818-19, 816-36 (McMaster); AG H. Jones, 2040-2042; SG Cook 2073, 794-815;Wingate 837-841, 2021-29; Jg.W. Williams, 2030-31; AG Audtior Matthews, 2031-33; Kendall, 2033-37; Lambert 2037; Sojourner, 2037 – 2040; Sr. Asst. AG Waters, 1994-96; 1997-2004 (Lightsey); Hardin, 2004-2017; Caughman, 2017; Asst. AG Jowers, 2017-21]

In September 2017, the trial of Appellant's claim for fees for her 6-year service to James Brown's estate and 2000 Irrevocable Trust began in Aiken Case No. 2013-CP-02-1337. The same experts designated in Richland 4900 by SWB were called to testify in Aiken 1337.

Also in September 2017, Appellant filed what would become Appellate Case No. 2017-1899, appealing from circuit court orders which "dropped the Attorney General as a party" under Rule 21, SCRCP. From that date forward, Respondents would successfully claim that an appellate stay under Rule 241, SCACR, prevented all action in this case, even effort to substitute the estate of a deceased plaintiff, add several minors who had reached adulthood, and to substitute real parties in interest for one or more plaintiffs, and otherwise ensure the proper parties were subject to the jurisdiction of the courts.

In addition, Bauknight filed, *ex parte* in Case 1337, records of tens of millions of dollars he had spent on Legacy Trust and other litigation from 2009 until December 2017, but the circuit court discarded them, after review, when Appellant's counsel objected to the *ex parte* filings. [R., 911-12;1039;1833;2043-44] The circuit court did not seal a copy for appellate review.

By 2019, with the help of experts who had not valued Brown's estate and did not know what the value was, Bauknight was able to persuade the circuit court – which had denied Appellant a right to a jury as to the value of Brown's assets just two weeks before trial – that Brown's worldwide music empire was worth $4.7 million when Brown died; that the AG's 2008 settlement was good for Brown's estate; and that neither Buchanan nor Pope had been entitled to any fee or costs for their 5-year service to Brown's estate from 2007 to 2013. [ ]

Bauknight, to advance Tommie Rae's and the Legacy Trust's position, in addition to the false felony claim, began making the false claim, including to the *New York Times*, that Appellant's $2.1 million claim to end all disputes with the Estate/2000 Trust of James Brown was actually a claim for $19 million. [R., 23;26] Bauknight made the false claim that Pope's ($2.1 million) fee claim was preventing needy students from receiving "I Feel Good" scholarships. [R., 1032;1038;1044;1048-9;2043;2049;2079;1851;1914-15] In addition Bauknight secured an order

paying into the court Appellant's $47,972 SA fee from 2007. [R., 17;682;913;1826;1850;1904] It has now more than doubled, and is earning interest at 8 ¾%, but Bauknight refuses to pay it. [R.,1850]

SWB and Bauknight published the false claim that Appellant sought $19 million and was holding up "I Feel Good" scholarships, when her actual claim was $2.1 million, to multiple courts and media from London, U.K., to Augusta, Ga., to *The New York Times.* [R., 14;26;586;1044-5]

IV. The Purpose of Richland 4900 is to Punish Buchanan and Pope for Proper Service

As the record, the Richland 4900 complaint, and the efforts to prevent discovery for nine years after AG Wilson's April 24, 2013 letter show, Richland 4900 had a single purpose: to punish Buchanan and Pope for properly performing their duty.

By September 12, 2017 SWB had not produced a single document in Richland 4900 in seven years except a witness list. [R. 1473; 1483;1485;1507] When actual facts about Tommie Rae's incorrect 4900 claims began spilling over into the public domain, SWB redoubled its efforts and expenditures to prevent release of documents confirming her false claims.

On page 3 and elsewhere the brief asserts that Richland 4900 was brought against Buchanan and Appellant for damages they caused to James Brown's estate. This is simply not the case, and never has been. Respondents blame Appellant for the delays in Richland 4900, but cannot deny that SWB, for the State/AG, sought more than nine years of stays in the 13-year-old case; has intermingled it with a 9-year-old FOIA case; and has tried to intermingle it with two other FOIA cases and Appellant's fee claim. [R., 1850;1858;1862;1869-70; 1898]

Respondents, in the name of the State/AG, have falsely accused Appellant and Buchanan of a federal felony, and now accuse her of a $19 million claim which she repeatedly offered to settle for $2.1 million. The 2009 claim. if invalid in any respect, could have been resolved by a

disallowance in 2009. Bauknight waited to hand-serve a disallowance in the courtroom on May 29, 2013, the very day Tommie Rae and Levenson announced to the circuit court their plan to disregard *Wilson* and reinstate the AG's 2008 settlement, and his counsel did so just after the announcement. [R., 1904;1906]

V. Each Petition to Lift Stay was Proper and Necessary to Prevent Loss of Jurisdiction over Plaintiffs and to Prevent the Issues from Becoming Moot.

Each of the motions to lift stay was considered by counsel and each was appropriate. [R.,2139-40] At all times it was certain that there would be a trial; Appellant is now 80 years old; and Appellant and counsel urged that the stay be lifted and discovery be completed before the parties escaped the jurisdiction of the court. [R. 2144; 8; 40; 669]

Perhaps it was the intention of SWB to try to wait out Appellant, but that is not a proper purpose for the plaintiffs to resist lifting a stay in a case which has had no discovery in 13 years. It was clearly the intent of the Legacy Trust, Tommie Rae, James Brown II and Bauknight to render the issues moot and to escape the jurisdiction of the Court. [R. 8; 40; 669; 2145] It was also their clear purpose that there be no evidence before the court that more than half of SWB's clients had not signed the 40% contingency fee; that the AG had not signed the 23% contingency fee; or that most Plaintiffs had abandoned their claims as set out in the Richland 4900 complaint.

The undisputed facts, which Respondents' brief does not deny, are that each motion to lift the stay was made in good faith with abundant evidence to support it. Some of the reasons for the motions to lift stay follow.

a. Petitions to lift stay after testimony of Governor McMaster that he did not authorize SWB to bring Richland 4900 in name of State/AG were proper.

Due Process does not allow the State/AG to sue a citizen for the benefit of another private citizen, or to refuse FOIA rights to someone the AG is suing in a tort suit seeking to benefit private

individuals. [R. 29; 96; 137; 141] The motion to lift stay to prevent injustice when Governor McMaster said "Ma'am I did not sue you" was adequate alone to lift the stay, although there were various additional factors. [R. 821]

b. Petitions to lift stay after April 24, 2013 letter of Attorney General Wilson confirmed Office of AG never hired SWB to bring Richland 4900 were proper.

When AG Wilson produced under FOIA in 2020 the April 24, 2013 letter of AG Wilson, making clear that SWB and Tommie Rae had used the State/AG's power for years with knowledge they had no authority to do so, the stay should have been lifted. [R. 918] Yet SWB and Bauknight, speaking for the State/AG, resisted it, further violating Appellant's civil rights which they had violated since 2010 in the name of the State/AG.

c. Petitions to lift stay were proper after circuit court declared unsigned AG's Special Counsel Litigation Agreement with SWB, concealed since 2010, was public.

In 2021 the circuit court released the AG's Special Counsel Litigation Agreement with SWB, making clear that SWB should never have resisted the first Richland 4900 (Due Process) appeal on behalf of the State/AG. This merited lifting the stay. [R. 901; 906]

d. Petitions to lift stay after James Brown's children sued Tommie Rae and Bauknight over alleged improper "backroom" termination rights deals were proper.

When some plaintiffs sued Bauknight and Tommie Rae over alleged "backroom" termination rights deals, and Tommie Rae and plaintiff James Brown II claimed they were residents of London, U.K., and were beyond the jurisdiction of the S.C. courts, it was appropriate to lift the stay.

e. Petitions to lift the stay after Supreme Court determined plaintiff Tommie Rae was not the spouse of James Brown were proper.

The Supreme Court's determination, at the behest of plaintiffs Deanna Brown-Thomas, Dr. Yamma Brown, the estate of Venisha Brown, and others was an appropriate time to lift the stay.

[R. 910; 1201] Yet SWB took a position against some of its own clients and resisted lifting the stay.

f. Petitions to lift stay after SWB refused to substitute plaintiff Venisha Brown's estate four years after her death were proper.

In 2018 an SWB attorney told Judge Early that Venisha Brown's estate would be substituted as soon as a PR was appointed. Before that, SWB had refused efforts to appoint a GAL for Venisha, who was incarcerated. Then SWB rejected a 2012 offer without extending it to her. Venisha is an approximately 9% plaintiff in Richland 4900 since the AG dropped out. She had been dead for four years. [R. 17; 23; 1472; 101; 720; 865; 1732; 1733; 2018; 2069] Her estate should have been substituted even if she was suing Bauknight and Tommie Rae.

g. Petitions to Lift Stay After the AG Released Public Documents in 2020 were Proper

The State is the State when it acts. The extraordinary release by the State/Attorney General under FOIA of documents the State/Attorney General, through SWB, had been concealing for a decade, including the April 24, 2013 letter, was an appropriate time to lift the stay and stop the State/AG's destruction of Buchanan's and Pope's careers and reputations. [R. 904; 918] SWB, for Tommie Rae and itself, bitterly fought lifting the stay because two SWB attorneys had testified under court order that the AG was SWB's client. [R. 837-42; 1584-7] It was time for the Due Process issues Buchanan and Pope raised in 2010 to be determined, and not be rendered moot.

h. Petitions to lift stay were proper after false felony claim lodged against Buchanan and Pope by SWB for State/AG for 11 Years was refuted by $90 million sale.

Since 2010 the State/AG has lodged the false felony claim against Buchanan and Pope while concealing the $4.7 million valuation a family member correctly described as "bogus." [R. 1861; 1897; 2283-4; 1019; 1034] Bauknight testified under oath in 2018 that he had no idea of the value of Brown's assets, but was sure that the hidden $4.7 million valuation was correct. [R 1039]

The Pullman Bond was paid off in 2011 and Brown's estate had made $5 million a year since his death. [R. 2175; 18] When Bauknight, after spending tens of millions of dollars to enforce the AG's 2008 settlement, sold the music empire for $90 million, it was clear that the State/AG's false felony claim lodged against Buchanan and Pope was false. [R. 905] The stay should have been lifted to stop the complete destruction under color of state law of Buchanan's and Pope's careers and reputations.

i. Petitions to lift stay were proper where SWB and Bauknight lodged the false claim to media and courts that Appellant sought $19 million from Brown's estate.

The State is the State, and the State/AG, through SWB and Bauknight, was not satisfied with the false felony claim. [R. 867] They now claim to the courts and media that Appellant is a liar who has demanded $19 million from Brown's estate and is holding up charitable scholarships. [R. 24] Appellant is 80 years old. Justice and a level playing field suggest that nine years of stays since the AG's April 24, 2013 letter, and the false claim when an offer of $2.1 million was made should stop. Appellant's Due Process and other rights have been violated for too long. [R. 141-2; 293; 413]

j. Petitions to lift stay after SWB's expert Miller testified that termination rights were less than $8.8 million and Copyrights as much as $100 million were proper.

Bauknight and the State/AG, through SWB, secured a circuit court order in 2017 that prevented their own expert's testimony that all termination rights of all of James Brown's heirs were worth only $8.8 million ten years after Brown's death, while the State/AG, through SWB and Bauknight, claimed Tommie Rae controlled tens of millions of dollars of termination rights. [R. 620-1; 865] The truth came out in 2018, despite the gag order. [R. 620-1; 865] Roger Miller testified that James Brown's copyright catalogue was "solid gold" and that "frothy" investors were

seeking to buy the copyrights alone for as much as $100 million when Buchanan and Pope turned Brown's estate over to the AG's trustee. [R. 620-1] This was reason enough to lift the stay.

k. Petitions to lift stay were proper after Bauknight admitted spending tens of millions of dollars on litigation costs from a claimed $4.7 million music empire.

When Bauknight admitted in a federal filing that he had spent tens of millions of dollars on litigation costs, the stay should have been lifted, especially where the circuit court had reviewed and discarded the records after counsel objected to an *ex parte* filing by Bauknight. [R. 911]

l. Petitions to lift stay related to Legacy Trust's claim, after securing partial summary judgment, that it never existed, were proper.

The Legacy Trust and Tommie Rae both secured summary judgment as to the counterclaims of Buchanan and Pope based solely on *Wilson.* Then both attempted to disappear while the appeal was pending, making a petition to lift the stay appropriate. [R. 1075; 725; 1730; 1831]

m. Petitions to lift stay after James Brown family challenged the less than $.5 million value by Bauknight of Brown's 10,000 items of personal property were proper.

Respondents claimed Buchanan and Pope did not properly sell 350 items of Brown's 10,000 items of personal property at $850,000 in 2007. Then all Richland 4900 plaintiffs, including the State/AG, claimed that all 10,000 items were worth only about $422,000. [R. 1880; 1891; 1898; 1900; 1916] Plaintiffs should be bound by their sworn statements, and a petition to lift stay was appropriate.

n. Petitions to lift stay where SWB, Tommie Rae and Bauknight had sealed and concealed public documents in discovery for more than ten years were proper.

Each year the State/AG, Tommie Rae and the Legacy Trust concealed more evidence of her false claims under oath. [R. 2064; 2067-8; 2073; 2077; 2085-92; 2097] A petition for stay was

appropriate so that a now-80 year old Appellant could address these 2010 false claims, which continue to multiply over the 9 years of stays since the AG's April 24, 2013 letter. [R. 918]

VI. SWB's Due Process and §1983 Violations on Behalf of State/AG and Lack of Candor

As stated in the filing and briefs, it is clear that SWB and Bauknight, under color of state law, have violated and continue to violate the Due Process, First Amendment, FOIA and other civil rights of Buchanan and Pope, and those claims have been preserved since 2010.

ARUGUMENT ON REPLY

I. The circuit court abused its discretion in granting sanctions, including striking Appellant's answer and holding her in default.

a. The pendency of the petition to lift stay in the circuit court had no effect on the April 14 hearing and does not reasonably give rise to the circuit court's grant of sanctions.

s

Respondents complain bitterly that Appellant's failure to withdraw her petition to lift stay in the circuit court is grounds for the sanctions granted by the circuit court, making the ridiculous statement that "since Pope briefed the November 1 Petition mere hours before the hearing, Respondents had no choice but to attend the April 14 hearing prepared to argue against it." [Resp. Br. At 8-9] Respondents ignore the fact that the April 14 hearing, set at Respondents' request before the remittitur came down, was the result of this Court's March 28, 2023, direction that the circuit court hear and rule on the long-pending Rule 59(e) motions. *After* requesting that the circuit court set a hearing, Respondents proceeded to file a 19-page return to the petition (to which they had not responded since its November 1, 2022 filing) and motion for sanctions against Appellant.

In that filing, Respondents' counsel certified, pursuant to Rule 11, that "consultation with opposing counsel concerning resolution of the issues contained in the foregoing Motion for Sanctions would serve no useful purpose." [Resp. Appx. 81] An email or telephone call would

easily have confirmed that Appellant had no intention of pressing the petition to lift stay at the then-scheduled hearing on the Rule 59(e) motions. Instead, Respondents hurriedly filed their 19-page motion for sanctions, with 10 exhibits, just over a week before the April 14 hearing. Appellant's counsel was forced at that point to invest a great deal of time in gathering the 10 affidavits of counsel and others to ensure the circuit court had *evidence* rebutting Respondents' baseless and unsupported claims.

Respondents treat one line in a short response to their return to the petition to lift stay and motion for sanctions as something of a "smoking gun" without noting that they have quoted the only line in that document relating to the petition to lift stay. The balance of that response responded to the serious and false allegations made in Respondents' motion for sanctions. Respondents inexplicably label Appellant's argument that the petition to lift stay was mooted by this Court's March 28, 2023 Order as Appellant's "current story." Although cited in Appellant's brief-in-chief, the *entirety* of Appellant's counsel's statements related to the petition to lift stay at the April 14 hearing is:

> MR. SILVERNAIL: Good morning, Your Honor. I believe there were three motions, one of which was our petition to lift the stay. I think the fact that we are here scheduled in accordance with the Supreme Court's order to hear the long pending motions to reconsider, that was the purpose of the petition to lift stay filed previously. I don't think we need to argue that if we're here to proceed with the hearing on the issues that were remanded from the previous appeal. [R. 1116]

Respondents repeatedly accuse Appellant of rewriting history, but do not confront the actual history in the record which shows that the April 14 hearing was sought by Respondents; that Respondents filed their motion for sanctions within days of this Court's March 28, 2023 Order; and that the April 14 hearing was predominately devoted to argument on Respondents' own motion. Respondents do not attempt to confront the fact that the circuit court's order clearly and

erroneously states that Appellant "argued for lifting the stay at the hearing," where the transcript shows she did not. [Order, p. 2, R. 110]

The circuit court's punitive sanctions, based on clear errors of fact regarding the April 14 hearing and the pendency of the November 1 petition, were an abuse of discretion.

b. This Court's Order of March 28, 2023 did not vest the circuit court with jurisdiction to hear and grant a later-filed motion for sanctions.

Respondents' argument regarding the circuit court's jurisdiction is opaque and appears to misconstrue Appellant's argument on that point. Appellant's argument is simple: this Court directed that the circuit court hear and decide the pending petition to lift stay and the two Rule 59(e) motions, not to hear an after-filed motion for sanctions prior to this Court's ultimate decision in the then-pending appeal.

This Court did not grant sanctions or direct the circuit court to do so. Appellant, respectful of this Court's criticisms and warnings, made *no further filings* until Respondents hurriedly moved for harsh sanctions and requested the motion be heard at the scheduled hearing eight days after the motion was filed. The circuit court proceeded to hear the matter and announce its intention to award sanctions, setting up this appeal before the remittitur came down from the last.

c. It was an abuse of discretion for the circuit court to sanction Appellant under Rule 11.

As argued in Appellant's brief-in-chief, there is no South Carolina authority confirming that Rule 11 can be used to justify striking a litigant's answer where the answer was properly signed and filed by counsel licensed in South Carolina. While Respondents correctly note that the language of Rule 11 does not limit the court to monetary sanctions, they do not confront *Ex Parte Bon Secours–St. Francis Xavier Hosp. Inc.*, 393 S.C. 590, 713 S.E.2d 624 (2011), in which this

Court reversed an award of sanctions "going beyond the conventional award of costs and fees" as an abuse of discretion.

d. Respondents cite no *evidence* in the record to support the circuit court's granting sanctions against Appellant under the FCPSA and appear to concede that their motion under the FCPSA was untimely as to most matters addressed in the circuit court's order.

Respondents argue that three Orders of this Court – two of which do not touch on filings *in this case*, and the March 28, 2023 Order which identifies no filings in the circuit court as being frivolous – are all the evidence needed to justify the circuit court's harsh sanctions. [Resp. Brief. 11-14] The only citations to the record in Respondents' argument on this point are to the circuit court's sanctions order itself, this Court's Orders, and a 2021 motion filed by Appellant.

Respondents identify no filing by Appellant which violates any of the quoted Orders of this Court, and Appellant has not violated those Orders.

Further, Respondents appear to concede Appellant's argument that Respondents' motion for sanctions under the FCPSA was untimely for all matters addressed in the sanctions order other than the November 1 petition to lift stay, which Appellant did not argue or pursue. In footnote 3 of their brief, Respondents acknowledge Appellant's argument that a motion for sanctions under the FCPSA must be filed within 10 days after the court's decision. Rather than rebutting this argument, Respondents simply point out that their motion could have been timely as to the November 1 petition.

For these reasons, it was an abuse of discretion for the circuit court to grant sanctions against Appellant under the FCPSA.

e. Respondents fail to address Appellant's argument regarding the circuit court's excessive fee award and contradict their own previous statements.

Respondents avoid confronting Appellant's clear argument that Respondents cannot simultaneously argue that Appellant's petitions to lift the stay were each duplicative of the last *and* that Respondents were somehow required to invest increasing and substantial legal fees in responding to the subsequent petitions. Instead, they note the circuit court's recital of the factors involved in generally determining the reasonableness of attorneys' fees as set out in *Glasscock v. Glasscock,* 304 S.C. 158, 403 S.E.2d 213 (1991).

Respondents proceed to spend the balance of this section of their argument complaining generally about various statements in Appellant's brief. In doing so, Respondents allege that "[t]he award of attorneys' fees to the Estate of James brown – as the payor of the undersigned and the lead Plaintiff/Respondent – is completely appropriate." [Resp. Brief at 15] Respondents seem intent on making the Estate the "lead Plaintiff/Respondent" to avoid scrutiny of their own complaint, which makes clear that the baseless claims therein are made primarily on behalf of the Legacy Trust and Tommie Rae – where Appellant never had a duty to either.

Respondents' statement in their brief that the Estate was the proper payee of any sanctions awarded is in conflict with their counsel's representations at the April 14 hearing, in which the following exchange between the circuit court and Respondents' counsel took place:

> THE COURT: The Supreme Court has determined in this order that Ms. Pope has engaged in abusive serial filings. I've seen evidence of the same throughout numerous filings that have been submitted to me. I find that the Estate --
>
> Is it the Estate or the Trustee?
>
> MR. GENDE: The Plaintiffs in case number 4900, including the Estate. [R. 1170]

The Court nonetheless proceeded to award monetary sanctions to the Estate only. [R.118]

Finally, Respondents acknowledge one of the time entries presented to the circuit court was unrelated to the matters for which the circuit court awarded sanctions and note (correctly) that they had previously conceded their error in the requested fee amount. Respondents do not mention the fact that, despite Appellant's noting the clear error and Respondents' conceding it in response to her motion for reconsideration, the circuit court nonetheless proceeded to deny any reconsideration, stating that it was "unable to find any misapprehension or misapplication of fact or law." [R. 121]

The circuit court abused its discretion in awarding $32,137.50 in attorneys' fees and costs against Appellant.

f. Respondents fail to respond to Appellant's clear argument that Respondents, rather than Appellant, have delayed this case.

Appellant refers to her complete and documented argument in her brief-in-chief, which shows that by baselessly avoiding and delaying discovery; obtaining a 3-year *de facto* stay; and refusing to proceed with any matters during the 6 years in which appeals were pending, Respondents are the "root cause of delay" herein.

g. Respondents fail to acknowledge their and their counsel's improper State action

In opposing Appellant's argument that Respondents have violated her constitutional rights and her civil rights under 42 U.S.C.A. § 1983, Respondents fail to cite to a single piece of evidence in the record. Instead, they assert baldly that "the only State agency ever involved in this case – the Attorney General's Office – has not been a party for years and was removed from the case." [Resp. Brief at 17] They fail to acknowledge that former Attorney General McMaster testified "Ma'am, I did not sue you" or that the

AG's office wrote Respondents' counsel on April 24, 2013, notifying SWB that it *never* represented the AG. [R. 821; 918]

Appellant notes that this April 24, 2013 letter, concealed until 2020, was a basis for the November 1 petition seeking to proceed with this matter in light of the revelation that SWB and Bauknight had continued their State action for years without disclosing the AG's April 24, 2013 letter. SWB, through Bauknight's claim that he speaks on behalf of AG, continues to speak for the State.

h. Respondents' casual suggestion that this Court bar Appellant from being able to file any future appeal is unfounded and outrageous.

Respondents, as they have repeatedly done in previous filings, slip their most outrageous request into their conclusion. They suggest that this Court "issue any further relief [it] considers appropriate, including but not limited to denying Pope the opportunity to file any further appeals in Case 4900." Here, in the final sentence of their brief, Respondents reveal their true outlook: Appellant should have no rights to defend herself. They ask this Court to affirm the circuit court's striking her answer; send this matter to an expedited damages hearing in default; and bar Appellant from having any relief from whatever the circuit court may do in that proceeding.

The fact that Respondents make this extraordinary suggestion in a conclusion, rather than an argument, can only be attributed to Respondents' knowledge that their request is unsupportable. They cite *McCullough v. McCullough*, 242 S.C. 108, 130 S.E.2d 77 (1963), a 1963 case which states in part that appeals are not a matter of right, without noting that *McCullough* involved an appeal from a court of limited jurisdiction. This Court's decision in that case was based on the fact that the lower court did not have jurisdiction over the matter decided *and* that the statute creating that court provided only for appeals to the court of common pleas.

Nothing in *McCullough* justifies Respondents' brazen suggestion that this Court should deprive Appellant of all due process and allow Respondents and the circuit court to proceed to a default damages hearing with certainty that Appellant's constitutional and other rights can be pushed aside.

Conclusion

Petitioner respectfully submits that this Court should reverse or vacate the Orders of the circuit court assessing sanctions and striking her answer.

Respectfully submitted,

s/Adam T. Silvernail

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September 29, 2023

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Certificate of Counsel

The undersigned counsel for Appellant hereby certifies that the Appellant's Reply Brief complies with the requirements of Rule 211(b).

s/Adam T. Silvernail